

AMENDED IN SENATE JULY 15, 2010

AMENDED IN ASSEMBLY APRIL 29, 2009

AMENDED IN ASSEMBLY APRIL 14, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

## ASSEMBLY BILL

**No. 1511**

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**Introduced by Assembly Member De Leon**

February 27, 2009

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~~An act to add Article 6 (commencing with Section 32254.5) to Chapter 2 of Part 19 of Division 1 of Title 1 of the Education Code, relating to pupil safety. An act to amend Sections 17276, 17276.9, 24416, and 24416.9 of, to add Sections 17276.11, 17276.12, 17276.13, 23663.1, 24416.11, 24416.12, 24416.13, and 25128.7 to, and to repeal Sections 17276.10, 23663, 24416.10, and 25128.5 of, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.~~

### LEGISLATIVE COUNSEL'S DIGEST

AB 1511, as amended, De Leon. ~~Pupil safety: interagency strategies: school campus prosecutors. Income taxes: net operating losses: credit sharing: single sales factor.~~

*Existing law allows individual and corporate taxpayers to utilize net operating losses and carryovers and carrybacks of those losses for purposes of offsetting their individual and corporate tax liabilities. Existing law, for net operating losses incurred in taxable years beginning on or after January 1, 2008, provides a carryover period of 20 years and allows net operating losses attributable to taxable years beginning on or after January 1, 2011, to be carrybacks to each of the preceding 2 taxable years. Existing law disallows the deduction for net operating losses and net operating loss carryovers in the 2008 and*

2009 taxable years for a taxpayer with business income of \$500,000 or more and extends the carryover period for those net operating losses, thus allowing the taxpayer to have the same number of years to utilize the deduction as it would have had if the disallowance for 2008 and 2009 had not occurred.

This bill would disallow the use of net operating loss carrybacks by individual and corporate taxpayers. This bill would also extend the disallowance of the net operation loss deduction and carryovers, and the carryover extension, to the 2010 and 2011 taxable years.

The Corporation Tax Law, for taxable years beginning on or after January 1, 2008, allows a credit to be assigned to an eligible assignee, as defined, for use by that assignee in a taxable year beginning on or after January 1, 2010.

This bill would delay the use of the assigned credit by an eligible assignee to taxable years beginning on or after January 1, 2012.

The Corporation Tax Law imposes taxes measured by income and, in the case of a business with income derived from or attributable to sources both within and without this state, apportions the business income between this state and other states and foreign countries in accordance with a specified 4-factor formula based on the property, payroll, and sales within and without this state, except that in the case of an apportioning trade or business that derives more than 50% of its gross business receipts from conducting one or more qualified business activities, as defined, business income is apportioned in accordance with a specified 3-factor formula. Existing law, for taxable years beginning on or after January 1, 2011, allows a taxpayer required to apportion in accordance with the 4-factor formula to make an annual election to have that business income apportioned in accordance with a single sales factor formula.

This bill would eliminate the authorization for specified taxpayers to elect to have business income apportioned in accordance with a single sales factor formula and instead require those taxpayers to apportion their income in accordance with a single sales factor formula for taxable years beginning on or after January 1, 2012.

Under the Personal Income Tax Law and the Corporation Tax Law, various provisions of the federal Internal Revenue Code, including provisions relating to net operating losses, in the Revenue and Taxation Code, Chapter 14 of the Statutes of 2010 would change that specified date to January 1, 2010, for taxable years beginning on or after that date.

*This bill would add provisions relating to net operating losses that would conform to the provisions in Chapter 14 of the Statutes of 2010, as provided.*

*This bill would result in a change in state taxes for the purpose of increasing state revenues within the meaning of Section 3 of Article XIII A of the California Constitution, and thus would require for passage the approval of  $\frac{2}{3}$  of the membership of each house of the Legislature.*

*This bill would take effect immediately as a tax levy.*

~~Existing law, the Interagency School Safety Demonstration Act of 1985, states that the intent of the Legislature in enacting its provisions is to encourage school districts, county offices of education, law enforcement agencies, and agencies serving youth to develop and implement interagency strategies, in-service training programs, and activities that will, among other things, reduce school crime and violence. Existing law establishes the School/Law Enforcement Partnership and charges it with undertaking several efforts intended to reduce school crime, as specified.~~

~~This bill would authorize a governing board of a school district or county superintendent of schools to enter into a memorandum of understanding with a prosecuting city attorney's office or district attorney's office having filing jurisdiction over the school district in order to facilitate the placement of one or more prosecutors on one or more school district campuses in order to promote public safety.~~

Vote: ~~majority~~ $\frac{2}{3}$ . Appropriation: no. Fiscal committee: ~~no~~-yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1     SECTION 1. Section 17276 of the Revenue and Taxation Code
- 2     is amended to read:
- 3     17276. Except as provided in Sections 17276.1, 17276.2,
- 4     17276.4, 17276.5, 17276.6, and 17276.7, the deduction provided
- 5     by Section 172 of the Internal Revenue Code, relating to a net
- 6     operating loss deduction, shall be modified as follows:
- 7     (a) (1) Net operating losses attributable to taxable years
- 8     beginning before January 1, 1987, shall not be allowed.
- 9     (2) A net operating loss shall not be carried forward to any
- 10    taxable year beginning before January 1, 1987.

(b) (1) Except as provided in paragraphs (2) and (3), the provisions of Section 172(b)(2) of the Internal Revenue Code, relating to the amount of carryovers, shall be modified so that the applicable percentage of the entire amount of the net operating loss for any taxable year shall be eligible for carryover to any subsequent taxable year. For purposes of this subdivision, the applicable percentage shall be:

(A) Fifty percent for any taxable year beginning before January 1, 2000.

(B) Fifty-five percent for any taxable year beginning on or after January 1, 2000, and before January 1, 2002.

(C) Sixty percent for any taxable year beginning on or after January 1, 2002, and before January 1, 2004.

(D) One hundred percent for any taxable year beginning on or after January 1, 2004.

(2) In the case of a taxpayer who has a net operating loss in any taxable year beginning on or after January 1, 1994, and who operates a new business during that taxable year, each of the following shall apply to each loss incurred during the first three taxable years of operating the new business:

(A) If the net operating loss is equal to or less than the net loss from the new business, 100 percent of the net operating loss shall be carried forward as provided in subdivision (d).

(B) If the net operating loss is greater than the net loss from the new business, the net operating loss shall be carried over as follows:

(i) With respect to an amount equal to the net loss from the new business, 100 percent of that amount shall be carried forward as provided in subdivision (d).

(ii) With respect to the portion of the net operating loss that exceeds the net loss from the new business, the applicable percentage of that amount shall be carried forward as provided in subdivision (d).

(C) For purposes of Section 172(b)(2) of the Internal Revenue Code, the amount described in clause (ii) of subparagraph (B) shall be absorbed before the amount described in clause (i) of subparagraph (B).

(3) In the case of a taxpayer who has a net operating loss in any taxable year beginning on or after January 1, 1994, and who

operates an eligible small business during that taxable year, each of the following shall apply:

(A) If the net operating loss is equal to or less than the net loss from the eligible small business, 100 percent of the net operating loss shall be carried forward to the taxable years specified in subdivision (d).

(B) If the net operating loss is greater than the net loss from the eligible small business, the net operating loss shall be carried over as follows:

(i) With respect to an amount equal to the net loss from the eligible small business, 100 percent of that amount shall be carried forward as provided in subdivision (d).

(ii) With respect to that portion of the net operating loss that exceeds the net loss from the eligible small business, the applicable percentage of that amount shall be carried forward as provided in subdivision (d).

(C) For purposes of Section 172(b)(2) of the Internal Revenue Code, the amount described in clause (ii) of subparagraph (B) shall be absorbed before the amount described in clause (i) of subparagraph (B).

(4) In the case of a taxpayer who has a net operating loss in a taxable year beginning on or after January 1, 1994, and who operates a business that qualifies as both a new business and an eligible small business under this section, that business shall be treated as a new business for the first three taxable years of the new business.

(5) In the case of a taxpayer who has a net operating loss in a taxable year beginning on or after January 1, 1994, and who operates more than one business, and more than one of those businesses qualifies as either a new business or an eligible small business under this section, paragraph (2) shall be applied first, except that if there is any remaining portion of the net operating loss after application of clause (i) of subparagraph (B) of that paragraph, paragraph (3) shall be applied to the remaining portion of the net operating loss as though that remaining portion of the net operating loss constituted the entire net operating loss.

(6) For purposes of this section, the term “net loss” means the amount of net loss after application of Sections 465 and 469 of the Internal Revenue Code.

~~(e) Section 172(b)(1) of the Internal Revenue Code, relating to net operating loss carrybacks and carryovers and the years to which the loss may be carried, is modified as follows:~~

~~(1) Net operating loss carrybacks shall not be allowed for any net operating losses attributable to taxable years beginning before January 1, 2011.~~

~~(2) A net operating loss attributable to taxable years beginning on or after January 1, 2011, shall be a net operating loss carryback to each of the two taxable years preceding the taxable year of the loss in lieu of the number of years provided therein.~~

~~(A) For a net operating loss attributable to a taxable year beginning on or after January 1, 2011, and before January 1, 2012, the amount of carryback to any taxable year shall not exceed 50 percent of the net operating loss.~~

~~(B) For a net operating loss attributable to a taxable year beginning on or after January 1, 2012, and before January 1, 2013, the amount of carryback to any taxable year shall not exceed 75 percent of the net operating loss.~~

~~(C) For a net operating loss attributable to a taxable year beginning on or after January 1, 2013, the amount of carryback to any taxable year shall not exceed 100 percent of the net operating loss.~~

~~(3) Notwithstanding paragraph (2), Section 172(b)(1)(B) of the Internal Revenue Code, relating to special rules for REITs, and Sections 172(b)(1)(E) and 172(h) of the Internal Revenue Code, relating to corporate equity reduction interest loss, shall apply as provided.~~

~~(4) A net operating loss carryback shall not be carried back to any taxable year beginning before January 1, 2009.~~

~~(c) Net operating loss carrybacks shall not be allowed.~~

~~(d) (1) (A) For a net operating loss for any taxable year beginning on or after January 1, 1987, and before January 1, 2000, Section 172(b)(1)(A)(ii) of the Internal Revenue Code, relating to years to which net operating losses may be carried, is modified to substitute “five taxable years” in lieu of “20 taxable years” except as otherwise provided in paragraphs (2) and (3).~~

~~(B) For a net operating loss for any taxable year beginning on or after January 1, 2000, and before January 1, 2008, Section 172(b)(1)(A)(ii) of the Internal Revenue Code, relating to years~~

1 to which net operating losses may be carried, is modified to  
2 substitute “10 taxable years” in lieu of “20 taxable years.”

3 (2) For any taxable year beginning before January 1, 2000, in  
4 the case of a “new business,” the “five taxable years” in paragraph  
5 (1) shall be modified to read as follows:

6 (A) “Eight taxable years” for a net operating loss attributable  
7 to the first taxable year of that new business.

8 (B) “Seven taxable years” for a net operating loss attributable  
9 to the second taxable year of that new business.

10 (C) “Six taxable years” for a net operating loss attributable to  
11 the third taxable year of that new business.

12 (3) For any carryover of a net operating loss for which a  
13 deduction is denied by Section 17276.3, the carryover period  
14 specified in this subdivision shall be extended as follows:

15 (A) By one year for a net operating loss attributable to taxable  
16 years beginning in 1991.

17 (B) By two years for a net operating loss attributable to taxable  
18 years beginning prior to January 1, 1991.

19 (4) The net operating loss attributable to taxable years beginning  
20 on or after January 1, 1987, and before January 1, 1994, shall be  
21 a net operating loss carryover to each of the 10 taxable years  
22 following the year of the loss if it is incurred by a taxpayer that is  
23 under the jurisdiction of the court in a Title 11 or similar case at  
24 any time during the income year. The loss carryover provided in  
25 the preceding sentence shall not apply to any loss incurred after  
26 the date the taxpayer is no longer under the jurisdiction of the court  
27 in a Title 11 or similar case.

28 (e) For purposes of this section:

29 (1) “Eligible small business” means any trade or business that  
30 has gross receipts, less returns and allowances, of less than one  
31 million dollars (\$1,000,000) during the taxable year.

32 (2) Except as provided in subdivision (f), “new business” means  
33 any trade or business activity that is first commenced in this state  
34 on or after January 1, 1994.

35 (3) “Title 11 or similar case” shall have the same meaning as  
36 in Section 368(a)(3) of the Internal Revenue Code.

37 (4) In the case of any trade or business activity conducted by a  
38 partnership or “S” corporation paragraphs (1) and (2) shall be  
39 applied to the partnership or “S” corporation.

1 (f) For purposes of this section, in determining whether a trade  
2 or business activity qualifies as a new business under paragraph  
3 (2) of subdivision (e), the following rules shall apply:

4 (1) In any case where a taxpayer purchases or otherwise acquires  
5 all or any portion of the assets of an existing trade or business  
6 (irrespective of the form of entity) that is doing business in this  
7 state (within the meaning of Section 23101), the trade or business  
8 thereafter conducted by the taxpayer (or any related person) shall  
9 not be treated as a new business if the aggregate fair market value  
10 of the acquired assets (including real, personal, tangible, and  
11 intangible property) used by the taxpayer (or any related person)  
12 in the conduct of its trade or business exceeds 20 percent of the  
13 aggregate fair market value of the total assets of the trade or  
14 business being conducted by the taxpayer (or any related person).  
15 For purposes of this paragraph only, the following rules shall apply:

16 (A) The determination of the relative fair market values of the  
17 acquired assets and the total assets shall be made as of the last day  
18 of the first taxable year in which the taxpayer (or any related  
19 person) first uses any of the acquired trade or business assets in  
20 its business activity.

21 (B) Any acquired assets that constituted property described in  
22 Section 1221(1) of the Internal Revenue Code in the hands of the  
23 transferor shall not be treated as assets acquired from an existing  
24 trade or business, unless those assets also constitute property  
25 described in Section 1221(1) of the Internal Revenue Code in the  
26 hands of the acquiring taxpayer (or related person).

27 (2) In any case where a taxpayer (or any related person) is  
28 engaged in one or more trade or business activities in this state, or  
29 has been engaged in one or more trade or business activities in this  
30 state within the preceding 36 months (“prior trade or business  
31 activity”), and thereafter commences an additional trade or business  
32 activity in this state, the additional trade or business activity shall  
33 only be treated as a new business if the additional trade or business  
34 activity is classified under a different division of the Standard  
35 Industrial Classification (SIC) Manual published by the United  
36 States Office of Management and Budget, 1987 edition, than are  
37 any of the taxpayer’s (or any related person’s) current or prior  
38 trade or business activities.

39 (3) In any case where a taxpayer, including all related persons,  
40 is engaged in trade or business activities wholly outside of this



1 state and the taxpayer first commences doing business in this state  
2 (within the meaning of Section 23101) after December 31, 1993  
3 (other than by purchase or other acquisition described in paragraph  
4 (1)), the trade or business activity shall be treated as a new business  
5 under paragraph (2) of subdivision (e).

6 (4) In any case where the legal form under which a trade or  
7 business activity is being conducted is changed, the change in form  
8 shall be disregarded and the determination of whether the trade or  
9 business activity is a new business shall be made by treating the  
10 taxpayer as having purchased or otherwise acquired all or any  
11 portion of the assets of an existing trade or business under the rules  
12 of paragraph (1) of this subdivision.

13 (5) "Related person" shall mean any person that is related to  
14 the taxpayer under either Section 267 or 318 of the Internal  
15 Revenue Code.

16 (6) "Acquire" shall include any gift, inheritance, transfer incident  
17 to divorce, or any other transfer, whether or not for consideration.

18 (7) (A) For taxable years beginning on or after January 1, 1997,  
19 the term "new business" shall include any taxpayer that is engaged  
20 in biopharmaceutical activities or other biotechnology activities  
21 that are described in Codes 2833 to 2836, inclusive, of the Standard  
22 Industrial Classification (SIC) Manual published by the United  
23 States Office of Management and Budget, 1987 edition, and as  
24 further amended, and that has not received regulatory approval for  
25 any product from the United States Food and Drug Administration.

26 (B) For purposes of this paragraph:

27 (i) "Biopharmaceutical activities" means those activities that  
28 use organisms or materials derived from organisms, and their  
29 cellular, subcellular, or molecular components, in order to provide  
30 pharmaceutical products for human or animal therapeutics and  
31 diagnostics. Biopharmaceutical activities make use of living  
32 organisms to make commercial products, as opposed to  
33 pharmaceutical activities that make use of chemical compounds  
34 to produce commercial products.

35 (ii) "Other biotechnology activities" means activities consisting  
36 of the application of recombinant DNA technology to produce  
37 commercial products, as well as activities regarding pharmaceutical  
38 delivery systems designed to provide a measure of control over  
39 the rate, duration, and site of pharmaceutical delivery.

(g) In computing the modifications under Section 172(d)(2) of the Internal Revenue Code, relating to capital gains and losses of taxpayers other than corporations, the exclusion provided by Section 18152.5 shall not be allowed.

(h) Notwithstanding any provisions of this section to the contrary, a deduction shall be allowed to a “qualified taxpayer” as provided in Sections 17276.1, 17276.2, 17276.4, 17276.5, 17276.6, and 17276.7.

(i) The Franchise Tax Board may prescribe appropriate regulations to carry out the purposes of this section, including any regulations necessary to prevent the avoidance of the purposes of this section through splitups, shell corporations, partnerships, tiered ownership structures, or otherwise.

(j) The Franchise Tax Board may reclassify any net operating loss carryover determined under either paragraph (2) or (3) of subdivision (b) as a net operating loss carryover under paragraph (1) of subdivision (b) upon a showing that the reclassification is necessary to prevent evasion of the purposes of this section.

(k) Except as otherwise provided, the amendments made by Chapter 107 of the Statutes of 2000 shall apply to net operating losses for taxable years beginning on or after January 1, 2000.

*SEC. 2. Section 17276.9 of the Revenue and Taxation Code is amended to read:*

17276.9. (a) Notwithstanding Sections 17276, 17276.1, 17276.2, 17276.4, 17276.5, 17276.6, and 17276.7 of this code and Section 172 of the Internal Revenue Code, no net operating loss deduction shall be allowed for any taxable year beginning on or after January 1, 2008, and before January 1, 2010.

(b) For any net operating loss or carryover of a net operating loss for which a deduction is denied by subdivision (a), the carryover period under Section 172 of the Internal Revenue Code shall be extended as follows:

(1) By one year, for losses incurred in taxable years beginning on or after January 1, 2008, and before January 1, 2009.

(2) By two years, for losses incurred in taxable years beginning before January 1, 2008.

~~(c) Notwithstanding subdivision (a), a net operating loss deduction shall be allowed for carryback of a net operating loss attributable to a taxable year beginning on or after January 1, 2011.~~

~~(d)~~

(c) The provisions of this section shall not apply to a taxpayer with net business income of less than five hundred thousand dollars (\$500,000) for the taxable year. For purposes of this subdivision, business income means:

(1) Income from a trade or business, whether conducted by the taxpayer or by a passthrough entity owned directly or indirectly by the taxpayer. For purposes of this paragraph, the term “passthrough entity” means a partnership or an “S” corporation.

(2) Income from rental activity.

(3) Income attributable to a farming business.

*SEC. 3. Section 17276.10 of the Revenue and Taxation Code is repealed.*

~~17276.10. Notwithstanding Section 17276.1, 17276.2, 17276.4, 17276.5, 17276.6, or 17276.7 to the contrary, a net operating loss attributable to a taxable year beginning on or after January 1, 2008, shall be a net operating carryover to each of the 20 taxable years following the year of the loss, and a net operating loss attributable to a taxable year beginning on or after January 1, 2011, shall also be a net operating loss carryback to each of the two taxable years preceding the taxable year of loss.~~

*SEC. 4. Section 17276.11 is added to the Revenue and Taxation Code, to read:*

*17276.11. (a) Notwithstanding Sections 17276, 17276.1, 17276.2, 17276.4, 17276.5, 17276.6, 17276.7, and 17276.9 of this code and Section 172 of the Internal Revenue Code, no net operating loss deduction shall be allowed for any taxable year beginning on or after January 1, 2010, and before January 1, 2012.*

*(b) For any net operating loss or carryover of a net operating loss for which a deduction is denied by subdivision (a), the carryover period under Section 172 of the Internal Revenue Code shall be extended as follows:*

*(1) By two years, for a total of four years pursuant to Section 17276.9 and this section, for losses incurred in taxable years beginning before January 1, 2008.*

*(2) By one year, for a total of three years pursuant to Section 17276.9 and this section, for losses incurred in taxable years beginning on or after January 1, 2008, and before January 1, 2009.*

1 (3) By two years, for losses incurred in taxable years beginning  
2 on or after January 1, 2009, and before January 1, 2010.

3 (4) By one year, for losses incurred in taxable years beginning  
4 on or after January 1, 2010, and before January 1, 2011.

5 (c) The provisions of this section shall not apply to a taxpayer  
6 with net business income of less than five hundred thousand dollars  
7 (\$500,000) for the taxable year. For purposes of this subdivision,  
8 business income means:

9 (1) Income from a trade or business, whether conducted by the  
10 taxpayer or by a passthrough entity owned directly or indirectly  
11 by the taxpayer. For purposes of this paragraph, the term  
12 “passthrough entity” means a partnership or an “S” corporation.

13 (2) Income from rental activity.

14 (3) Income attributable to a farming business.

15 SEC. 5. Section 17276.12 is added to the Revenue and Taxation  
16 Code, to read:

17 17276.12. Notwithstanding Section 17276, 17276.1, 17276.2,  
18 17276.4, 17276.5, 17276.6, or 17276.7 to the contrary, a net  
19 operating loss attributable to a taxable year beginning on or after  
20 January 1, 2008, shall be a net operating carryover to each of the  
21 20 taxable years following the year of the loss.

22 SEC. 6. Section 17276.13 is added to the Revenue and Taxation  
23 Code, to read:

24 17276.13. (a) Notwithstanding any other law, in addition to  
25 the modifications made by Section 17276, the deduction provided  
26 by Section 172 of the Internal Revenue Code, relating to net  
27 operating loss deduction, shall be modified for the purposes of  
28 this part as follows:

29 (1) Section 172(b)(1)(J) of the Internal Revenue Code, relating  
30 to certain losses attributable to federally declared disasters, shall  
31 not apply.

32 (2) Section 172(j) of the Internal Revenue Code, relating to  
33 rules relating to qualified disaster losses, shall not apply.

34 (b) This section shall apply to taxable years beginning on or  
35 after January 1, 2010.

36 SEC. 7. Section 23663 of the Revenue and Taxation Code is  
37 repealed.

38 ~~23663. (a) (1) Notwithstanding any other law to the contrary,~~  
39 ~~for each taxable year beginning on or after July 1, 2008, any credit~~  
40 ~~allowed to a taxpayer under this chapter that is an “eligible credit~~

1 (within the meaning of paragraph (2) of subdivision (b)) may be  
2 assigned by that taxpayer to any “eligible assignee” (within the  
3 meaning of paragraph (3) of subdivision (b)).

4 (2) A credit assigned under paragraph (1) may only be applied  
5 by the eligible assignee against the “tax” of the eligible assignee  
6 in a taxable year beginning on or after January 1, 2010.

7 (3) Except as specifically provided in this section, following an  
8 assignment of any eligible credit under this section, the eligible  
9 assignee shall be treated as if it originally earned the assigned  
10 credit.

11 (b) For purposes of this section, the following definitions shall  
12 apply:

13 (1) “Affiliated corporation” means a corporation that is a  
14 member of a commonly controlled group as defined in Section  
15 25105.

16 (2) “Eligible credit” shall mean:

17 (A) Any credit earned by the taxpayer in a taxable year  
18 beginning on or after July 1, 2008, or

19 (B) Any credit earned in any taxable year beginning before July  
20 1, 2008, that is eligible to be carried forward to the taxpayer’s first  
21 taxable year beginning on or after July 1, 2008, under the  
22 provisions of this part.

23 (3) “Eligible assignee” shall mean any affiliated corporation  
24 that is properly treated as a member of the same combined  
25 reporting group pursuant to Section 25101 or 25110 as the taxpayer  
26 assigning the eligible credit as of:

27 (A) In the case of credits earned in taxable years beginning  
28 before July 1, 2008:

29 (i) June 30, 2008, and

30 (ii) The last day of the taxable year of the assigning taxpayer  
31 in which the eligible credit is assigned.

32 (B) In the case of credits earned in taxable years beginning on  
33 or after July 1, 2008:

34 (i) The last day of the first taxable year in which the credit was  
35 allowed to the taxpayer, and

36 (ii) The last day of the taxable year of the assigning taxpayer  
37 in which the eligible credit is assigned.

38 (c) (1) The election to assign any credit under subdivision (a)  
39 shall be irrevocable once made, and shall be made by the taxpayer

1 allowed that credit on its original return for the taxable year in  
2 which the assignment is made.

3 (2) The taxpayer assigning any credit under this section shall  
4 reduce the amount of its unused credit by the face amount of any  
5 credit assigned under this section, and the amount of the assigned  
6 credit shall not be available for application against the assigning  
7 taxpayer's "tax" in any taxable year, nor shall it thereafter be  
8 included in the amount of any credit carryover of the assigning  
9 taxpayer.

10 (3) The eligible assignee of any credit under this section may  
11 apply all or any portion of the assigned credits against the "tax"  
12 (as defined in Section 23036) of the eligible assignee for the taxable  
13 year in which the assignment occurs, or any subsequent taxable  
14 year, subject to any carryover period limitations that apply to the  
15 assigned credit and also subject to the limitation in paragraph (2)  
16 of subdivision (a).

17 (4) In no case may the eligible assignee sell, otherwise transfer,  
18 or thereafter assign the assigned credit to any other taxpayer.

19 (d) (1) No consideration shall be required to be paid by the  
20 eligible assignee to the assigning taxpayer for assignment of any  
21 credit under this section.

22 (2) In the event that any consideration is paid by the eligible  
23 assignee to the assigning taxpayer for the transfer of an eligible  
24 credit under this section, then:

25 (A) No deduction shall be allowed to the eligible assignee under  
26 this part with respect to any amounts so paid, and

27 (B) No amounts so received by the assigning taxpayer shall be  
28 includable in gross income under this part.

29 (e) (1) The Franchise Tax Board shall specify the form and  
30 manner in which the election required under this section shall be  
31 made, as well as any necessary information that shall be required  
32 to be provided by the taxpayer assigning the credit to the eligible  
33 assignee.

34 (2) Any taxpayer who assigns any credit under this section shall  
35 report any information, in the form and manner specified by the  
36 Franchise Tax Board, necessary to substantiate any credit assigned  
37 under this section and verify the assignment and subsequent  
38 application of any assigned credit.

39 (3) Chapter 3.5 (commencing with Section 11340) of Part 1 of  
40 Division 3 of Title 2 of the Government Code shall not apply to

1 any standard, criterion, procedure, determination, rule, notice, or  
2 guideline established or issued by the Franchise Tax Board  
3 pursuant to paragraphs (1) and (2):

4 (4) The Franchise Tax Board may issue any regulations  
5 necessary to implement the purposes of this section, including any  
6 regulations necessary to specify the treatment of any assignment  
7 that does not comply with the requirements of this section  
8 (including, for example, where the taxpayer and eligible assignee  
9 are not properly treated as members of the same combined  
10 reporting group on any of the dates specified in paragraph (3) of  
11 subdivision (b)).

12 (f) (1) The taxpayer and the eligible assignee shall be jointly  
13 and severally liable for any tax, addition to tax, or penalty that  
14 results from the disallowance, in whole or in part, of any eligible  
15 credit assigned under this section.

16 (2) Nothing in this section shall limit the authority of the  
17 Franchise Tax Board to audit either the assigning taxpayer or the  
18 eligible assignee with respect to any eligible credit assigned under  
19 this section.

20 (g) On or before June 30, 2013, the Franchise Tax Board shall  
21 report to the Joint Legislative Budget Committee, the Legislative  
22 Analyst, and the relevant policy committees of both houses on the  
23 effects of this section. The report shall include, but need not be  
24 limited to, the following:

25 (1) An estimate of use of credits in the 2010 and 2011 taxable  
26 years by eligible taxpayers.

27 (2) An analysis of effect of this section on expanding business  
28 activity in the state related to these credits.

29 (3) An estimate of the resulting tax revenue loss to the state.

30 (4) The report shall cover all credits covered in this section, but  
31 focus on the credits related to research and development, economic  
32 incentive areas, and low income housing.

33 *SEC. 8. Section 23663.1 is added to the Revenue and Taxation*  
34 *Code, to read:*

35 23663.1. (a) (1) Notwithstanding any other law to the  
36 contrary, for each taxable year beginning on or after July 1, 2008,  
37 any credit allowed to a taxpayer under this chapter that is an  
38 “eligible credit (within the meaning of paragraph (2) of subdivision  
39 (b)) may be assigned by that taxpayer to any “eligible assignee”  
40 (within the meaning of paragraph (3) of subdivision (b)).

1 (2) A credit assigned under paragraph (1) may only be applied  
2 by the eligible assignee against the “tax” of the eligible assignee  
3 in a taxable year beginning on or after January 1, 2012.

4 (3) Except as specifically provided in this section, following an  
5 assignment of any eligible credit under this section, the eligible  
6 assignee shall be treated as if it originally earned the assigned  
7 credit.

8 (b) For purposes of this section, the following definitions shall  
9 apply:

10 (1) “Affiliated corporation” means a corporation that is a  
11 member of a commonly controlled group as defined in Section  
12 25105.

13 (2) “Eligible credit” shall mean:

14 (A) Any credit earned by the taxpayer in a taxable year  
15 beginning on or after July 1, 2008, or

16 (B) Any credit earned in any taxable year beginning before July  
17 1, 2008, that is eligible to be carried forward to the taxpayer’s  
18 first taxable year beginning on or after July 1, 2008, under the  
19 provisions of this part.

20 (3) “Eligible assignee” shall mean any affiliated corporation  
21 that is properly treated as a member of the same combined  
22 reporting group pursuant to Section 25101 or 25110 as the  
23 taxpayer assigning the eligible credit as of:

24 (A) In the case of credits earned in taxable years beginning  
25 before July 1, 2008:

26 (i) June 30, 2008, and

27 (ii) The last day of the taxable year of the assigning taxpayer  
28 in which the eligible credit is assigned.

29 (B) In the case of credits earned in taxable years beginning on  
30 or after July 1, 2008.

31 (i) The last day of the first taxable year in which the credit was  
32 allowed to the taxpayer, and

33 (ii) The last day of the taxable year of the assigning taxpayer  
34 in which the eligible credit is assigned.

35 (c) (1) The election to assign any credit under subdivision (a)  
36 shall be irrevocable once made, and shall be made by the taxpayer  
37 allowed that credit on its original return for the taxable year in  
38 which the assignment is made.

39 (2) The taxpayer assigning any credit under this section shall  
40 reduce the amount of its unused credit by the face amount of any



1 *credit assigned under this section, and the amount of the assigned*  
2 *credit shall not be available for application against the assigning*  
3 *taxpayer's "tax" in any taxable year, nor shall it thereafter be*  
4 *included in the amount of any credit carryover of the assigning*  
5 *taxpayer.*

6 *(3) The eligible assignee of any credit under this section may*  
7 *apply all or any portion of the assigned credits against the "tax"*  
8 *(as defined in Section 23036) of the eligible assignee for the taxable*  
9 *year in which the assignment occurs, or any subsequent taxable*  
10 *year, subject to any carryover period limitations that apply to the*  
11 *assigned credit and also subject to the limitation in paragraph (2)*  
12 *of subdivision (a).*

13 *(4) In no case may the eligible assignee sell, otherwise transfer,*  
14 *or thereafter assign the assigned credit to any other taxpayer.*

15 *(d) (1) No consideration shall be required to be paid by the*  
16 *eligible assignee to the assigning taxpayer for assignment of any*  
17 *credit under this section.*

18 *(2) In the event that any consideration is paid by the eligible*  
19 *assignee to the assigning taxpayer for the transfer of an eligible*  
20 *credit under this section, then:*

21 *(A) No deduction shall be allowed to the eligible assignee under*  
22 *this part with respect to any amounts so paid, and*

23 *(B) No amounts so received by the assigning taxpayer shall be*  
24 *includable in gross income under this part.*

25 *(e) (1) The Franchise Tax Board shall specify the form and*  
26 *manner in which the election required under this section shall be*  
27 *made, as well as any necessary information that shall be required*  
28 *to be provided by the taxpayer assigning the credit to the eligible*  
29 *assignee.*

30 *(2) Any taxpayer who assigns any credit under this section shall*  
31 *report any information, in the form and manner specified by the*  
32 *Franchise Tax Board, necessary to substantiate any credit assigned*  
33 *under this section and verify the assignment and subsequent*  
34 *application of any assigned credit.*

35 *(3) Chapter 3.5 (commencing with Section 11340) of Part 1 of*  
36 *Division 3 of Title 2 of the Government Code shall not apply to*  
37 *any standard, criterion, procedure, determination, rule, notice, or*  
38 *guideline established or issued by the Franchise Tax Board*  
39 *pursuant to paragraphs (1) and (2).*

1     (4) *The Franchise Tax Board may issue any regulations*  
2 *necessary to implement the purposes of this section, including any*  
3 *regulations necessary to specify the treatment of any assignment*  
4 *that does not comply with the requirements of this section,*  
5 *including, for example, where the taxpayer and eligible assignee*  
6 *are not properly treated as members of the same combined*  
7 *reporting group on any of the dates specified in paragraph (3) of*  
8 *subdivision (b).*

9     (f) (1) *The taxpayer and the eligible assignee shall be jointly*  
10 *and severally liable for any tax, addition to tax, or penalty that*  
11 *results from the disallowance, in whole or in part, of any eligible*  
12 *credit assigned under this section.*

13     (2) *Nothing in this section shall limit the authority of the*  
14 *Franchise Tax Board to audit either the assigning taxpayer or the*  
15 *eligible assignee with respect to any eligible credit assigned under*  
16 *this section.*

17     (g) *On or before June 30, 2015, the Franchise Tax Board shall*  
18 *report to the Joint Legislative Budget Committee, the Legislative*  
19 *Analyst, and the relevant policy committees of both houses on the*  
20 *effects of this section. The report shall include, but need not be*  
21 *limited to, the following:*

22     (1) *An estimate of use of credits in the 2012 and 2013 taxable*  
23 *years by eligible taxpayers.*

24     (2) *An analysis of effect of this section on expanding business*  
25 *activity in the state related to these credits.*

26     (3) *An estimate of the resulting tax revenue loss to the state.*

27     (4) *The report shall cover all credits covered in this section,*  
28 *but focus on the credits related to research and development,*  
29 *economic incentive areas, and low income housing.*

30     SEC. 9. *Section 24416 of the Revenue and Taxation Code is*  
31 *amended to read:*

32     24416. Except as provided in Sections 24416.1, 24416.2,  
33 24416.4, 24416.5, 24416.6, and 24416.7, a net operating loss  
34 deduction shall be allowed in computing net income under Section  
35 24341 and shall be determined in accordance with Section 172 of  
36 the Internal Revenue Code, except as otherwise provided.

37     (a) (1) Net operating losses attributable to taxable years  
38 beginning before January 1, 1987, shall not be allowed.

39     (2) A net operating loss shall not be carried forward to any  
40 taxable year beginning before January 1, 1987.

(b) (1) Except as provided in paragraphs (2) and (3), the provisions of Section 172(b)(2) of the Internal Revenue Code, relating to the amount of carryovers, shall be modified so that the applicable percentage of the entire amount of the net operating loss for any taxable year shall be eligible for carryover to any subsequent taxable year. For purposes of this subdivision, the applicable percentage shall be:

(A) Fifty percent for any taxable year beginning before January 1, 2000.

(B) Fifty-five percent for any taxable year beginning on or after January 1, 2000, and before January 1, 2002.

(C) Sixty percent for any taxable year beginning on or after January 1, 2002, and before January 1, 2004.

(D) One hundred percent for any taxable year beginning on or after January 1, 2004.

(2) In the case of a taxpayer who has a net operating loss in any taxable year beginning on or after January 1, 1994, and who operates a new business during that taxable year, each of the following shall apply to each loss incurred during the first three taxable years of operating the new business:

(A) If the net operating loss is equal to or less than the net loss from the new business, 100 percent of the net operating loss shall be carried forward as provided in subdivision (e).

(B) If the net operating loss is greater than the net loss from the new business, the net operating loss shall be carried over as follows:

(i) With respect to an amount equal to the net loss from the new business, 100 percent of that amount shall be carried forward as provided in subdivision (e).

(ii) With respect to the portion of the net operating loss that exceeds the net loss from the new business, the applicable percentage of that amount shall be carried forward as provided in subdivision (d).

(C) For purposes of Section 172(b)(2) of the Internal Revenue Code, the amount described in clause (ii) of subparagraph (B) shall be absorbed before the amount described in clause (i) of subparagraph (B).

(3) In the case of a taxpayer who has a net operating loss in any taxable year beginning on or after January 1, 1994, and who

operates an eligible small business during that taxable year, each of the following shall apply:

(A) If the net operating loss is equal to or less than the net loss from the eligible small business, 100 percent of the net operating loss shall be carried forward to the taxable years specified in paragraph (1) of subdivision (e).

(B) If the net operating loss is greater than the net loss from the eligible small business, the net operating loss shall be carried over as follows:

(i) With respect to an amount equal to the net loss from the eligible small business, 100 percent of that amount shall be carried forward as provided in subdivision (e).

(ii) With respect to that portion of the net operating loss that exceeds the net loss from the eligible small business, the applicable percentage of that amount shall be carried forward as provided in subdivision (e).

(C) For purposes of Section 172(b)(2) of the Internal Revenue Code, the amount described in clause (ii) of subparagraph (B) shall be absorbed before the amount described in clause (i) of subparagraph (B).

(4) In the case of a taxpayer who has a net operating loss in a taxable year beginning on or after January 1, 1994, and who operates a business that qualifies as both a new business and an eligible small business under this section, that business shall be treated as a new business for the first three taxable years of the new business.

(5) In the case of a taxpayer who has a net operating loss in a taxable year beginning on or after January 1, 1994, and who operates more than one business, and more than one of those businesses qualifies as either a new business or an eligible small business under this section, paragraph (2) shall be applied first, except that if there is any remaining portion of the net operating loss after application of clause (i) of subparagraph (B) of paragraph (2), paragraph (3) shall be applied to the remaining portion of the net operating loss as though that remaining portion of the net operating loss constituted the entire net operating loss.

(6) For purposes of this section, “net loss” means the amount of net loss after application of Sections 465 and 469 of the Internal Revenue Code.

1 (c) For any taxable year in which the taxpayer has in effect a  
2 water's-edge election under Section 25110, the deduction of a net  
3 operating loss carryover shall be denied to the extent that the net  
4 operating loss carryover was determined by taking into account  
5 the income and factors of an affiliated corporation in a combined  
6 report whose income and apportionment factors would not have  
7 been taken into account if a water's-edge election under Section  
8 25110 had been in effect for the taxable year in which the loss was  
9 incurred.

10 ~~(d) Section 172(b)(1) of the Internal Revenue Code, relating to~~  
11 ~~net operating loss carrybacks and carryovers and the years to which~~  
12 ~~the loss may be carried, is modified as follows:~~

13 ~~(1) Net operating loss carrybacks shall not be allowed for any~~  
14 ~~net operating losses attributable to taxable years beginning before~~  
15 ~~January 1, 2011.~~

16 ~~(2) A net operating loss attributable to taxable years beginning~~  
17 ~~on or after January 1, 2011, shall be a net operating loss carryback~~  
18 ~~to each of the two taxable years preceding the taxable year of the~~  
19 ~~loss in lieu of the number of years provided therein.~~

20 ~~(A) For a net operating loss attributable to a taxable year~~  
21 ~~beginning on or after January 1, 2011, and before January 1, 2012,~~  
22 ~~the amount of carryback to any taxable year shall not exceed 50~~  
23 ~~percent of the net operating loss.~~

24 ~~(B) For a net operating loss attributable to a taxable year~~  
25 ~~beginning on or after January 1, 2012, and before January 1, 2013,~~  
26 ~~the amount of carryback to any taxable year shall not exceed 75~~  
27 ~~percent of the net operating loss.~~

28 ~~(C) For a net operating loss attributable to a taxable year~~  
29 ~~beginning on or after January 1, 2013, the amount of carryback to~~  
30 ~~any taxable year shall not exceed 100 percent of the net operating~~  
31 ~~loss.~~

32 ~~(3) Notwithstanding paragraph (2), Section 172(b)(1)(B) of the~~  
33 ~~Internal Revenue Code, relating to special rules for REITs, and~~  
34 ~~Sections 172(b)(1)(E) and 172(h) of the Internal Revenue Code,~~  
35 ~~relating to corporate equity reduction interest loss, shall apply as~~  
36 ~~provided.~~

37 ~~(4) A net operating loss carryback shall not be carried back to~~  
38 ~~any taxable year beginning before January 1, 2009.~~

39 *(d) Net operating loss carrybacks shall not allowed.*

(e) (1) (A) For a net operating loss for any taxable year beginning on or after January 1, 1987, and before January 1, 2000, Section 172(b)(1)(A)(ii) of the Internal Revenue Code, relating to years to which net operating losses may be carried, is modified to substitute “five taxable years” in lieu of “20 years” except as otherwise provided in paragraphs (2), (3), and (4).

(B) For a net operating loss for any income year beginning on or after January 1, 2000, ~~and before January 1, 2008~~, Section 172(b)(1)(A)(ii) of the Internal Revenue Code, relating to years to which net operating losses may be carried, is modified to substitute “10 taxable years” in lieu of “20 taxable years.”

(2) For any income year beginning before January 1, 2000, in the case of a “new business,” the “five taxable years” referred to in paragraph (1) shall be modified to read as follows:

(A) “Eight taxable years” for a net operating loss attributable to the first taxable year of that new business.

(B) “Seven taxable years” for a net operating loss attributable to the second taxable year of that new business.

(C) “Six taxable years” for a net operating loss attributable to the third taxable year of that new business.

(3) For any carryover of a net operating loss for which a deduction is denied by Section 24416.3, the carryover period specified in this subdivision shall be extended as follows:

(A) By one year for a net operating loss attributable to taxable years beginning in 1991.

(B) By two years for a net operating loss attributable to taxable years beginning prior to January 1, 1991.

(4) The net operating loss attributable to taxable years beginning on or after January 1, 1987, and before January 1, 1994, shall be a net operating loss carryover to each of the 10 taxable years following the year of the loss if it is incurred by a corporation that was either of the following:

(A) Under the jurisdiction of the court in a Title 11 or similar case at any time prior to January 1, 1994. The loss carryover provided in the preceding sentence shall not apply to any loss incurred in an income year after the taxable year during which the corporation is no longer under the jurisdiction of the court in a Title 11 or similar case.

1 (B) In receipt of assets acquired in a transaction that qualifies  
2 as a tax-free reorganization under Section 368(a)(1)(G) of the  
3 Internal Revenue Code.

4 (f) For purposes of this section:

5 (1) “Eligible small business” means any trade or business that  
6 has gross receipts, less returns and allowances, of less than one  
7 million dollars (\$1,000,000) during the income year.

8 (2) Except as provided in subdivision (g), “new business” means  
9 any trade or business activity that is first commenced in this state  
10 on or after January 1, 1994.

11 (3) “Title 11 or similar case” shall have the same meaning as  
12 in Section 368(a)(3) of the Internal Revenue Code.

13 (4) In the case of any trade or business activity conducted by a  
14 partnership or an “S corporation,” paragraphs (1) and (2) shall be  
15 applied to the partnership or “S corporation.”

16 (g) For purposes of this section, in determining whether a trade  
17 or business activity qualifies as a new business under paragraph  
18 (2) of subdivision (e), the following rules shall apply:

19 (1) In any case where a taxpayer purchases or otherwise acquires  
20 all or any portion of the assets of an existing trade or business  
21 (irrespective of the form of entity) that is doing business in this  
22 state (within the meaning of Section 23101), the trade or business  
23 thereafter conducted by the taxpayer (or any related person) shall  
24 not be treated as a new business if the aggregate fair market value  
25 of the acquired assets (including real, personal, tangible, and  
26 intangible property) used by the taxpayer (or any related person)  
27 in the conduct of its trade or business exceeds 20 percent of the  
28 aggregate fair market value of the total assets of the trade or  
29 business being conducted by the taxpayer (or any related person).  
30 For purposes of this paragraph only, the following rules shall apply:

31 (A) The determination of the relative fair market values of the  
32 acquired assets and the total assets shall be made as of the last day  
33 of the first taxable year in which the taxpayer (or any related  
34 person) first uses any of the acquired trade or business assets in  
35 its business activity.

36 (B) Any acquired assets that constituted property described in  
37 Section 1221(1) of the Internal Revenue Code in the hands of the  
38 transferor shall not be treated as assets acquired from an existing  
39 trade or business, unless those assets also constitute property

1 described in Section 1221(1) of the Internal Revenue Code in the  
2 hands of the acquiring taxpayer (or related person).

3 (2) In any case where a taxpayer (or any related person) is  
4 engaged in one or more trade or business activities in this state, or  
5 has been engaged in one or more trade or business activities in this  
6 state within the preceding 36 months (“prior trade or business  
7 activity”), and thereafter commences an additional trade or business  
8 activity in this state, the additional trade or business activity shall  
9 only be treated as a new business if the additional trade or business  
10 activity is classified under a different division of the Standard  
11 Industrial Classification (SIC) Manual published by the United  
12 States Office of Management and Budget, 1987 edition, than are  
13 any of the taxpayer’s (or any related person’s) current or prior  
14 trade or business activities.

15 (3) In any case where a taxpayer, including all related persons,  
16 is engaged in trade or business activities wholly outside of this  
17 state and the taxpayer first commences doing business in this state  
18 (within the meaning of Section 23101) after December 31, 1993  
19 (other than by purchase or other acquisition described in paragraph  
20 (1)), the trade or business activity shall be treated as a new business  
21 under paragraph (2) of subdivision (e).

22 (4) In any case where the legal form under which a trade or  
23 business activity is being conducted is changed, the change in form  
24 shall be disregarded and the determination of whether the trade or  
25 business activity is a new business shall be made by treating the  
26 taxpayer as having purchased or otherwise acquired all or any  
27 portion of the assets of an existing trade or business under the rules  
28 of paragraph (1) of this subdivision.

29 (5) “Related person” shall mean any person that is related to  
30 the taxpayer under either Section 267 or 318 of the Internal  
31 Revenue Code.

32 (6) “Acquire” shall include any transfer, whether or not for  
33 consideration.

34 (7) (A) For taxable years beginning on or after January 1, 1997,  
35 the term “new business” shall include any taxpayer that is engaged  
36 in biopharmaceutical activities or other biotechnology activities  
37 that are described in Codes 2833 to 2836, inclusive, of the Standard  
38 Industrial Classification (SIC) Manual published by the United  
39 States Office of Management and Budget, 1987 edition, and as



1 further amended, and that has not received regulatory approval for  
2 any product from the United States Food and Drug Administration.

3 (B) For purposes of this paragraph:

4 (i) “Biopharmaceutical activities” means those activities that  
5 use organisms or materials derived from organisms, and their  
6 cellular, subcellular, or molecular components, in order to provide  
7 pharmaceutical products for human or animal therapeutics and  
8 diagnostics. Biopharmaceutical activities make use of living  
9 organisms to make commercial products, as opposed to  
10 pharmaceutical activities that make use of chemical compounds  
11 to produce commercial products.

12 (ii) “Other biotechnology activities” means activities consisting  
13 of the application of recombinant DNA technology to produce  
14 commercial products, as well as activities regarding pharmaceutical  
15 delivery systems designed to provide a measure of control over  
16 the rate, duration, and site of pharmaceutical delivery.

17 (h) For purposes of corporations whose net income is determined  
18 under Chapter 17 (commencing with Section 25101), Section  
19 25108 shall apply to each of the following:

20 (1) The amount of net operating loss incurred in any taxable  
21 year that may be carried forward to another taxable year.

22 (2) The amount of any loss carry forward that may be deducted  
23 in any taxable year.

24 (i) The provisions of Section 172(b)(1)(D) of the Internal  
25 Revenue Code, relating to bad debt losses of commercial banks,  
26 shall not be applicable.

27 (j) The Franchise Tax Board may prescribe appropriate  
28 regulations to carry out the purposes of this section, including any  
29 regulations necessary to prevent the avoidance of the purposes of  
30 this section through splitups, shell corporations, partnerships, tiered  
31 ownership structures, or otherwise.

32 (k) The Franchise Tax Board may reclassify any net operating  
33 loss carryover determined under either paragraph (2) or (3) of  
34 subdivision (b) as a net operating loss carryover under paragraph  
35 (1) of subdivision (b) upon a showing that the reclassification is  
36 necessary to prevent evasion of the purposes of this section.

37 (l) Except as otherwise provided, the amendments made by  
38 Chapter 107 of the Statutes of 2000 shall apply to net operating  
39 losses for taxable years beginning on or after January 1, 2000.

1     *SEC. 10. Section 24416.9 of the Revenue and Taxation Code*  
2     *is amended to read:*

3     24416.9. (a) Notwithstanding Sections 24416, 24416.1,  
4     24416.2, 24416.4, 24416.5, 24416.6, and 24416.7 of this code and  
5     Section 172 of the Internal Revenue Code, no net operating loss  
6     deduction shall be allowed for any taxable year beginning on or  
7     after January 1, 2008, and before January 1, 2010.

8     (b) For any net operating loss or carryover of a net operating  
9     loss for which a deduction is denied by subdivision (a), the  
10    carryover period under Section 172 of the Internal Revenue Code  
11    shall be extended as follows:

12    (1) By one year, for losses incurred in taxable years beginning  
13    on or after January 1, 2008, and before January 1, 2009.

14    (2) By two years, for losses incurred in taxable years beginning  
15    before January 1, 2008.

16    ~~(e) Notwithstanding subdivision (a), a net operating loss~~  
17    ~~deduction shall be allowed for carryback of a net operating loss~~  
18    ~~attributable to a taxable year beginning on or after January 1, 2011.~~

19    ~~(d)~~

20    (c) The provisions of this section shall not apply to a taxpayer  
21    with income subject to tax under this part of less than five hundred  
22    thousand dollars (\$500,000) for the taxable year.

23    *SEC. 11. Section 24416.10 of the Revenue and Taxation Code*  
24    *is repealed.*

25    ~~24416.10. Notwithstanding Section 24416.1, 24416.2, 24416.4,~~  
26    ~~24416.5, 24416.6, or 24416.7 to the contrary, a net operating loss~~  
27    ~~attributable to a taxable year beginning on or after January 1, 2008,~~  
28    ~~shall be a net operating carryover to each of the 20 taxable years~~  
29    ~~following the year of the loss, and a net operating loss attributable~~  
30    ~~to a taxable year beginning on or after January 1, 2011, shall also~~  
31    ~~be a net operating loss carryback to each of the two taxable years~~  
32    ~~preceding the taxable year of loss.~~

33    *SEC. 12. Section 24416.11 is added to the Revenue and*  
34    *Taxation Code, to read:*

35    24416.11. (a) Notwithstanding Sections 24416, 24416.1,  
36    24416.2, 24416.4, 24416.5, 24416.6, 24416.7, and 24416.9 of this  
37    code and Section 172 of the Internal Revenue Code, no net  
38    operating loss deduction shall be allowed for any taxable year  
39    beginning on or after January 1, 2010, and before January 1,  
40    2012.

1     (b) For any net operating loss or carryover of a net operating  
2     loss for which a deduction is denied by subdivision (a), the  
3     carryover period under Section 172 of the Internal Revenue Code  
4     shall be extended as follows:

5     (1) By two years, for a total of four years pursuant to Section  
6     24416.9 and this section, for losses incurred in taxable years  
7     beginning before January 1, 2008.

8     (2) By two years, for a total of three years pursuant to Section  
9     24416.9 and this section, for losses incurred in taxable years  
10    beginning on or after January 1, 2008, and before January 1,  
11    2009.

12    (3) By two years, for losses incurred in taxable years beginning  
13    on or after January 1, 2009, and before January 1, 2010.

14    (4) By one year, for losses incurred in taxable years beginning  
15    on or after January 1, 2010, and before January 1, 2011.

16    (c) The provisions of this section shall not apply to a taxpayer  
17    with income subject to tax under this part of less than five hundred  
18    thousand dollars (\$500,000) for the taxable year.

19    SEC. 13. Section 24416.12 is added to the Revenue and  
20    Taxation Code, to read:

21    24416.12. Notwithstanding Section 24416, 24416.1, 24416.2,  
22    24416.4, 24416.5, 24416.6, or 24416.7 to the contrary, a net  
23    operating loss attributable to a taxable year beginning on or after  
24    January 1, 2008, shall be a net operating carryover to each of the  
25    20 taxable years following the year of the loss.

26    SEC. 14. Section 24416.13 is added to the Revenue and  
27    Taxation Code, to read:

28    24416.13. (a) Notwithstanding any other law, in addition to  
29    the modifications made by Section 24416, the deduction provided  
30    by Section 172 of the Internal Revenue Code, relating to net  
31    operating loss deduction, shall be modified for the purposes of  
32    this part as follows:

33    (1) Section 172(b)(1)(J) of the Internal Revenue Code, relating  
34    to certain losses attributable to federally declared disasters, shall  
35    not apply.

36    (2) Section 172(j) of the Internal Revenue Code, relating to  
37    rules relating to qualified disaster losses, shall not apply.

38    (b) This section shall appear to taxable years beginning on or  
39    after January 1, 2010.

1     *SEC. 15. Section 25128.5 of the Revenue and Taxation Code*  
2     *is repealed.*

3     ~~25128.5. (a) Notwithstanding Section 38006, for taxable years~~  
4     ~~beginning on or after January 1, 2011, any apportioning trade or~~  
5     ~~business, other than an apportioning trade or business described~~  
6     ~~in subdivision (b) of Section 25128, may make an irrevocable~~  
7     ~~annual election on an original timely filed return, in the manner~~  
8     ~~and form prescribed by the Franchise Tax Board to apportion its~~  
9     ~~income in accordance with this section, and not in accordance with~~  
10    ~~Section 25128.~~

11    ~~(b) Notwithstanding Section 38006, for taxable years beginning~~  
12    ~~on or after January 1, 2011, all business income of an apportioning~~  
13    ~~trade or business making an election described in subdivision (a)~~  
14    ~~shall be apportioned to this state by multiplying the business~~  
15    ~~income by the sales factor.~~

16    ~~(c) The Franchise Tax Board is authorized to issue regulations~~  
17    ~~necessary or appropriate regarding the making of an election under~~  
18    ~~this section, including regulations that are consistent with rules~~  
19    ~~prescribed for making an election under Section 25113.~~

20    *SEC. 16. Section 25128.7 is added to the Revenue and Taxation*  
21    *Code, to read:*

22    ~~25128.7. (a) Notwithstanding Section 38006, for taxable years~~  
23    ~~beginning on or after January 1, 2012, any apportioning trade or~~  
24    ~~business, other than an apportioning trade or business described~~  
25    ~~in subdivision (b) of Section 25128, shall apportion its business~~  
26    ~~income in accordance with this section, and not in accordance~~  
27    ~~with Section 25128.~~

28    ~~(b) Notwithstanding Section 38006, for taxable years beginning~~  
29    ~~on or after January 1, 2012, all business income of an apportioning~~  
30    ~~trade or business described in subdivision (a) shall be apportioned~~  
31    ~~to this state by multiplying the business income by the sales factor.~~

32    ~~(c) The Franchise Tax Board is authorized to issue regulations~~  
33    ~~necessary or appropriate regarding the administration of this~~  
34    ~~section.~~

35    ~~(d) This section shall become operative on January 1, 2012.~~

36    *SEC. 17. This act provides for a tax levy within the meaning*  
37    *of Article IV of the Constitution and shall go into immediate effect.*

38    ~~SECTION 1. (a) The health, safety, and welfare of the people~~  
39    ~~of California depend upon the ability to provide a proper education~~  
40    ~~for our children. Unfortunately, children simply cannot learn in~~

1 an environment that is unsafe. Strong partnerships between law  
2 enforcement, schools, and communities are essential in ensuring  
3 that school campuses remain safe havens that are conducive to  
4 learning and achievement instead of serving as recruitment centers  
5 for gangs and criminal activity. Therefore, the purpose of this act  
6 is to enable local municipalities, local school districts, and local  
7 law enforcement to form these strong partnerships to better provide  
8 for the safety and security of our children.

9 (b) It is the criminal prosecutor's responsibility to ensure that  
10 children feel safe in and around schools so that they can focus on  
11 learning, and it is the educator's responsibility to provide that  
12 learning. Although the roles of schools and law enforcement  
13 agencies differ, the Legislature finds that there are some significant  
14 areas of commonality. First, both schools and law enforcement  
15 agencies are responsible for the safety and well-being of pupils.  
16 Second, schools represent the natural centers of our communities.  
17 Working within the schools is a logical extension of law  
18 enforcement's responsibility for public safety in the broader  
19 community. Third, both schools and law enforcement agencies  
20 can play an important role in helping youth become productive,  
21 law-abiding residents. With these complimentary roles in mind, it  
22 is declared that the local prosecutor's office is in an ideal position  
23 to work with the corresponding local school district to implement  
24 strategies aimed at reversing conditions that produce and perpetuate  
25 an unsafe school environment.

26 (c) A successful partnership between prosecutor and school  
27 district has already proven successful under the toughest  
28 circumstances. Markham Middle School, located in the Watts area  
29 of South Los Angeles, had long been plagued by crime and gang  
30 violence. The area surrounding the Markham campus was home  
31 to seven criminal street gangs, and the school was widely  
32 considered to be among the most dangerous within the Los Angeles  
33 Unified School District. In February 2007, the Los Angeles City  
34 Attorney partnered with the Los Angeles Unified School District  
35 to place a prosecutor on campus. From the beginning, the city  
36 attorney's team understood that school safety requires a  
37 broad-based effort by the entire community, including educators,  
38 pupils, parents, law enforcement agencies, businesses, and  
39 community-based organizations. At the end of the first full  
40 academic year, without any change to the teaching or the

1 curriculum, the city attorney, the Los Angeles Unified School  
2 District, the Los Angeles Police Department, and the Los Angeles  
3 School Police Department observed that:

4 (1) Markham was significantly safer than at any point in recent  
5 memory.

6 (2) Markham's pupil standardized test scores rose for the first  
7 time in years, going from 519 to 542, beating the academic  
8 performance index target set by the State Department of Education  
9 by more than 55 percent.

10 (3) Markham's 8th grade graduation rate increased 14 percent  
11 from the year before, going from 66 percent to 80 percent.

12 (d) The Markham Middle School Safety Prosecutor Program  
13 demonstrated that a renewed dedication to pupils in the most  
14 underserved schools can create an environment where crime  
15 decreases, test scores rise, and pupils once again focus on learning.  
16 It is therefore declared that this educator-prosecutor partnership  
17 is a hopeful model for school safety reform, and its replication  
18 should be encouraged in other jurisdictions.

19 SEC. 2. Article 6 (commencing with Section 32254.5) is added  
20 to Chapter 2 of Part 19 of Division 1 of Title 1 of the Education  
21 Code, to read:

22  
23 Article 6. Prosecutors on School Campuses  
24

25 32254.5. (a) The governing board of a school district or a  
26 county superintendent of schools may enter into a memorandum  
27 of understanding (MOU) with a district attorney or prosecuting  
28 city attorney having filing jurisdiction over the school district in  
29 order to facilitate the placement of one or more prosecutors on one  
30 or more school district campuses in order to promote public safety.

31 (b) Participation shall be at the option of each agency. A school  
32 district, district attorney, or prosecuting city attorney shall not be  
33 required by the other party to enter into the MOU.

34 (c) The two agencies shall work together to develop the terms  
35 and conditions of the MOU. The MOU shall incorporate the  
36 conditions described in this section, and provisions deemed by the  
37 agencies as reasonably necessary to fulfill the purpose of school  
38 safety and to ensure compliance with the MOU and this section.  
39 The MOU shall include, but is not limited to, the following  
40 provisions:

1     ~~(1) The time period for the agencies' participation in the school~~  
2 ~~safety program and the procedures for the placement of one or~~  
3 ~~more prosecutors directly onto one or more campuses under the~~  
4 ~~jurisdiction of the school district.~~

5     ~~(2) The scope of work to be given to the prosecutor and how~~  
6 ~~the prosecutor is to work with the administration of the specific~~  
7 ~~school.~~

8     ~~(3) A procedure for funding the school safety program that~~  
9 ~~includes, but is not limited to, declarations that the agencies have~~  
10 ~~adequate funds available to provide for the costs that arise from~~  
11 ~~placing a prosecutor on a school campus.~~

12     ~~(4) Performance measures to evaluate the effectiveness of the~~  
13 ~~school safety program, including, but not limited to, annual~~  
14 ~~progress reports.~~

15     ~~(5) A statement that the primary purpose of the partnership is~~  
16 ~~to promote pupil safety and that the prosecutor shall attempt,~~  
17 ~~whenever possible, to prevent problems before they escalate.~~

18     ~~(d) For purposes of this section:~~

19     ~~(1) "Agency" means a governing board of a school district, a~~  
20 ~~county superintendent of schools, a district attorney, or a~~  
21 ~~prosecuting city attorney.~~

22     ~~(2) "School safety program" means the placement of one or~~  
23 ~~more prosecutors on one or more local school district campuses~~  
24 ~~in order to promote public safety.~~

25     ~~32254.6. Nothing in this article prohibits a governing board of~~  
26 ~~a school district or a county superintendent of schools from~~  
27 ~~adopting an alternative model of collaboration.~~